

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From October 1, 1954
Through December 31, 1954
VOLUME 77

SI GARRETT, Attorney General

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QUARTERLY REPORT
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ATTORNEY GENERAL
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ALABAMA
For the Period
October 1, 1954
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Volume No. 77

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1954, through December 31, 1954, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,
Attorney General.

Attorney General:
Si Garrett

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James R. Payne
Confidential Secretary:
Mrs. Dorothy G. Johnson

OPINIONS

October 5, 1954

Hon. William F. Thetford
Circuit Solicitor
Fifteenth Judicial Circuit
Montgomery 4, Alabama

Montgomery County—Solicitors—Funds—Costs and Fees.

1. The solicitor's fees in the solicitor's fund which have not been used by the circuit solicitor, as prescribed by Section 2 of Act No. 196, General and Local Acts 1953, page 262, during any fiscal year, remain in said fund for the next fiscal year.
2. The solicitor's fund created by Act No. 196, General and Local Acts 1953, page 262, annually shall be a minimum of \$1,000.00.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of September 17, 1954, is as follows:

"Your attention is directed to Act No. 196 of the Regular Session, 1953 Legislature, which act is found on page 262 of Volume I of the Acts of Alabama enacted by the 1953 Regular Session of the State Legislature.

"This act, in substance, sets up a solicitor's fund and requires the Board of Revenue of Montgomery County to make available the sum of \$1,000.00 for this fund. All solicitor's fees which are collected in the Circuit Court are paid in to the Board of Revenue and are credited against the \$1,000.00 set up in the Board of Revenue's budget.

"During the current fiscal year for Montgomery County, solicitor's fees collected have amounted to something in excess of \$1,100.00. Expenditures drawn from this fund have amounted to around \$1,000.00.

"We would like to be advised as to what disposition should be made of the solicitor's fees collected and paid in to the Board of Revenue over and above \$1,000.00 which are not spent during the fiscal year."

In pertinent part, Act No. 196, General and Local Acts 1953, page 262, reads as follows:

"Section 1. All solicitors' fees hereafter taxed as costs and collected in the Fifteenth Judicial Circuit under the provisions of Section 85 of Title 11, Code of Alabama 1940, as amended, shall be paid into the County

Treasury to the credit of a solicitors' fund, and be used and expended by the Circuit Solicitor as provided in Section 2.

"Section 2. The Circuit Solicitor of the Fifteenth Judicial Circuit is hereby authorized to requisition expenditures against the solicitor's fund for the payment of any and all expenses necessarily incurred by him in the proper discharge of the duties of his office as he sees fit.

"Section 3. The Clerk of the Board of Revenue of Montgomery County shall include in the budget of county funds required by law to be made by him the solicitors' fund of \$1,000.00. Solicitors fees **accumulated** and paid into the County Treasury as provided in Section 1 shall be credited to this fund, **but the solicitor's fund annually shall be a minimum of \$1,000.00.**" (Emphasis supplied.)

When a statute is ambiguous or doubtful in meaning, it should receive a rational and sensible construction in view of the purposes sought to be accomplished. **Odum Lumber Company vs. Southern States Iron Roofing Company**, 36 Ala. App. 270, 58 So. 2d 641; **Birmingham Paper Company vs. Curry**, 238 Ala. 138, 190 So. 86.

Under Section 1 of Act No. 196, *supra*, the solicitor's fees taxed as cost and collected in the 15th Judicial Circuit (Montgomery County) are paid into the county treasury to the credit of the solicitor's fund.

Section 2 of Act No. 196, *supra*, provides the only manner in which the solicitor's fund may be used. It may be used by the circuit solicitor only for the payment of expenses necessarily incurred by him in the proper discharge of the duties of his office. Therefore, any part of said fund not so used by the circuit solicitor during the fiscal year remains in said fund.

Section 3 of Act No. 196, *supra*, provides that the solicitor's fees **accumulated** and paid into the county treasury shall be credited to the solicitor's fund and that said solicitor's fund annually shall be a minimum of \$1,000.00. This section, when considered with Sections 1 and 2 of said Act, indicates a legislative intention that the solicitor's fund be supplemented by an appropriation from the general fund of the county in only an amount sufficient to insure that said solicitor's fund shall be a minimum of \$1,000.00 annually.

Therefore, I am of the opinion that any solicitor's fees in the solicitor's fund which have not been used by the circuit solicitor, as prescribed by Section 2 of Act No. 196, *supra*, during any fiscal year, remain in said fund for the next fiscal year.

I am further of the opinion that Section 3 of Act No. 196, *supra*, provides that, in the event that the amount of the solicitor's fund is less than \$1,000.00 at the time the clerk of the Board of Revenue of Montgomery County prepares the annual budget of the county funds, there shall be appropriated or loaned to said solicitor's fund an amount sufficient to raise the total amount of said

fund to \$1,000.00. This appropriation or loan shall be made from the general fund of the county. The solicitor's fees thereafter collected shall be used to reimburse the general fund of the county. Any solicitor's fees collected over and above the amount necessary to reimburse said general fund in full shall be credited to the solicitor's fund.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

October 15, 1954

Hon. D. S. McCrary, Jr.
Judge of Probate
Jackson County
Scottsboro, Alabama

Licenses—Lumber—Words and Phrases.

A wholesale lumber dealer within the meaning of Title 51, Section 546, Code of Alabama 1940, as amended by Act No. 460, General Acts 1945, page 693, is one who sells or negotiates sales of lumber in Alabama at wholesale, and does not include one who is engaged exclusively in purchasing lumber in this State and transporting it to another state.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, bearing date of September 23, 1954, is as follows:

"We would like an opinion on the following: Is a person or firm due to buy a license under Section 546, Title 51, when lumber is bought in this county but shipped immediately to another state for processing and resale?

"We have a case of this nature pending at present. The Southern Wood Preserving Company of Chattanooga, Tennessee, buys lumber in Jackson County but ships it to Tennessee. They have been cited for a wholesale lumber dealers license and have questioned whether or not they are actually due to buy this license."

As I read your request, it appears that the Southern Wood Preserving Company, a Tennessee concern, is merely purchasing lumber in Alabama

through its representatives and immediately shipping it to its processing plant located in the State of Tennessee.

If these are the facts, then I am of the opinion that this company is not a wholesale lumber dealer in Alabama, and is not liable for a license as such dealer.

Title 51, Section 546, Code of Alabama 1940, as amended by Act No. 460, General Acts 1945, page 693, the license statute involved, reads in material part as follows:

"Each wholesale dealer, or jobber of lumber and timber and for each wholesale dealer in lumber and timber on commission whether maintaining an established place of business or not, one hundred dollars. . . ."

For all practical purposes, a jobber is the same as a wholesaler, and will be so treated in this opinion.

A wholesale lumber dealer implies a trade or business of selling. A dealer is one who makes successive sales as a business. 45 Words and Phrases (Per. Ed.), 109, 110, and 111.

In interpreting the license statute involved, our Supreme Court has also held that "a wholesale dealer in lumber means one who sells at wholesale, no matter at what stage it has been purchased." *State v. Downs*, 240 Ala. 74, 197 So. 382.

The foregoing being considered, it clearly seems that the most essential factor of a wholesale dealer in lumber is that he be engaged in selling. Thus, as the Southern Wood Preserving Company, under the facts as related by you, is merely purchasing the lumber in this State, and does not sell or negotiate any of the sales of such lumber in Alabama, it appears that it is not a wholesale dealer in lumber in this State.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

October 18, 1954

Hon. H. A. Longshore
Superintendent of Insurance
State of Alabama
Montgomery 4, Alabama
Securities—Sales—Insurance—Licenses.

Licensed securities salesmen engaged in selling securities in Alabama, who offer life insurance coverage to purchasers in an amount equal to amount owed for securities but not to exceed \$10,000, are required to be licensed as life insurance agents.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of August 10, 1954, is as follows:

"Re: Coverage of Alabama Residents Under Group Life Creditor Policy Insuring the Lives of Purchasers of Mutual Fund Securities Under Periodic Payment Plans.

"An insurance company duly licensed in Alabama and in Tennessee wishes to issue an insurance policy to a Tennessee bank which would cover residents of Alabama to purchase shares in mutual investment funds securities under periodic payment plans. As we understand it, these securities would be sold in Alabama through duly licensed securities salesmen. When an individual purchases these securities he is given an opinion by the salesman to purchase them with or without insurance. The company states that no commissions would be paid to the securities salesmen by the insurance company.

"Your opinion is requested as to whether or not it is necessary that the individuals who sell the securities in Alabama and offer the insurance coverage must be licensed as life insurance agents."

The laws pertinent to the question here submitted are set forth in Title 28, Sections 66, 79 and 80, Code of Alabama 1940. Section 66, *supra*, provides:

"Insurance companies not incorporated by the laws of the State of Alabama, but legally authorized to do business in this state, through regularly commissioned and licensed agents located in this state, shall not make contracts of insurance on life or property herein save through agents of such companies regularly commissioned and licensed to write policies of insurance in Alabama; . . . Every insurance company licensed to do business in this state under provisions of this chapter, shall obtain from

the superintendent of insurance a certificate of authority for every individual agent writing or soliciting insurance for it in this state, and such certificate shall be renewable in January of each year."

Section 79, *supra*, is quoted in pertinent part as follows:

"Any person who solicits insurance on behalf of any insurance company, or for the agent of an insurance company or takes or transmits any application for insurance, or any policy of insurance, to or from any insurance company, or in any way gives notice that he will receive or transmit the same or receives or delivers a policy of insurance for any company, or examines or inspects a risk or receives, collects, or transmits any premium of insurance or makes or forwards any diagram of any building or buildings (except as a bona fide draughtsman), or countersigns any policy of insurance, or does or performs any other act or thing in the making or consummating of any contracts of insurance with or for any insurance company. . . . is deemed an insurance agent. No person shall perform any of the acts set out above as an agent for any insurance company until such company shall have complied with the laws of the state and received the proper license or certificate of authority from the superintendent of insurance authorizing it to do business in this State."

Section 80, *supra*, prohibits any person from engaging in business as an insurance agent until he shall have first complied with laws governing insurance agents and procured a license as required by the laws of this State.

To aid in making a determination of the question here presented, you have enclosed the complete file on this subject, including a sample copy of the application form used in the purchase and sale of shares. This form is entitled, "Application for Accumulative Investment Program." I understand that this form is currently in use by the First American National Bank of Nashville, Tennessee, in making sales of shares in Investment Trust of Boston through its securities salesmen.

The application form appears to contemplate the sale of shares on either of two plans. Program A is a sale of shares that carries with it provisions for life insurance coverage on the life of the applicant in an amount equal to the balance the applicant may owe for the shares to be purchased, but in no event more than \$10,000. Program B is a sale of shares made without life insurance protection for the applicant.

The application form, when executed by the applicant, authorizes and directs the First American National Bank of Nashville, Tennessee (hereinafter referred to as "the bank"), to invest in shares in Investment Trust of Boston; and, whenever the application is for Program A participation, it directs the bank to procure life insurance protection on the life of the applicant under the provisions of the Group Life Creditor's Insurance Policy issued by the John Hancock Mutual Life Insurance Company to the bank. The life insurance coverage is in an amount equal to the balance due upon the purchase price of the shares, not to exceed the sum of \$10,000.

There is a provision included within the application form by which the applicant acknowledges that he or she has been advised as to the terms of the insurance policy. Another provision contained therein directs that, in the event of the applicant's death while covered by the life insurance procured on his or her life under Program A, all monthly or quarterly payments unpaid at the time of said applicant's death shall become due immediately and the proceeds from the insurance shall be applied as payment therefor.

On the reverse side of the application form there is a series of questions for the applicant to answer if his order for shares is to be purchased under Program A. This part of the application form is entitled "Life Insurance Information For Program A," and is quoted as follows:

"LIFE INSURANCE INFORMATION FOR PROGRAM A

(To be filled in by the Applicant)

"1. Name Date of Birth
Month Day

Year Age next Birthday

"2. Address

"3. Present Occupation 4. Are you now
actively at work?

(Answer Yes or No.)

"5. Name and Address of Employer

"6. Exact Nature of Business

"7. Are you in sound health so far as you know or believe?

"8. Have you any deformity, impairment of sight or hearing or loss of limb?
.....

"9. Have you ever had or been told that you had:

A. Blood or sugar in your urine

B. Any heart trouble

C. High blood pressure

Answer Yes or No opposite each; if Yes, give dates, duration and severity.

"10. Have you had any ailment or disease lasting more than ten days which
involved hospitalization? If yes, explain

"11. Exact height ft. in. Accurate weight
(in shoes) (ordinary clothes)

"12. Have you ever been declined or postponed for Life or Health Insurance?
.....

(If answer is Yes, give full details.)

One of the provisions of the application recites that the insurance information set forth above is true in every respect and furnished without any reservations as to applicant's past or present condition of health.

The applicant pays a premium for the insurance procured for him under Program A, although from the facts such premium is not paid directly to the securities salesmen but is deducted from payments made by the applicant directly to the bank.

Provision No. 10 of the application stipulates that the application becomes an effective agreement between the investor (applicant) and Boston Trust Funds, Inc., upon its acceptance by the bank on behalf of Boston Trust Funds, Inc., and is to be construed under the laws of Tennessee. It further provides that the bank acts as agent, in carrying out provisions of the Program, for the investor (applicant), the investor's dealer, and for Boston Trust Funds, Inc.

Since the procurement of life insurance protection is made entirely dependent upon the investor-purchaser or applicant's completion of the form entitled "Life Insurance Information For Program A," it would appear to follow that this part of the application form would constitute an application for life insurance by the said applicant. The coverage or protection is furnished under a group policy which is referred to in the application form as Group Life Creditor's Insurance Policy. If the application is construed to be an application for life insurance, which, upon acceptance by the bank becomes an effective agreement or contract, it is an Alabama contract notwithstanding provisions in the application to the contrary. Title 28, Section 10, Code of Alabama 1940, is as follows:

"All contracts of insurance, the application for which is taken within the state, shall be deemed to have been made within this state, and subject to the laws thereof."

In the case of *State Life Ins. Co. v. Westscott*, 166 Ala. 192, 52 So. 344, it was decided that it was the intention of the Legislature, in enacting this statute, that all contracts made on applications signed in the state should be governed by its provisions, and that the statute should over-ride any provision in the contract contrary thereto. This resulted from a provision in the contract there involved which recited that the applicant agreed that any contract based upon the application should, at all times and places, be held to have been made at Indianapolis, Indiana, although actually the application was signed in Alabama and forwarded by the soliciting agent to defendant's office in Indianapolis.

The statute has been held constitutional in the case of *Smith v. Penn Mut. Life Ins. Co.*, 244 Ala. 610, 14 So. 2d 690. The court there held that such statute does not offend the provisions of the United States Constitution and could not be overridden by provisions contained in a contract. The court also held that the statute is mandatory and not directory only, and controls the nature and terms of the contract into which the company may induce the assured to enter.

Other pertinent facts to be considered indicate that these securities salesmen who propose to sell the shares for the bank are not to be paid any commissions for life insurance protection afforded the applicant under Program A, although they contemplate offering this plan to those who may be or become interested therein, and it is to be assumed that they will supervise the applicant's efforts in completing the form required. They will not be paid any form of remuneration for these services insofar as the life insurance business procured is concerned. It is said that these salesmen will not collect any premiums for life insurance protection applied for nor will they engage in the actual delivery of policies of life insurance.

The securities salesmen, as I understand the selling plan, are primarily concerned with the business of selling shares in the Investment Trust of Boston. These sales are made by them for the bank. Where the sale is made under the terms and provisions of Program A, the salesmen must, necessarily, answer any and all questions pertaining to the insurance coverage available to the applicants. Is it not reasonable to assume that these salesmen would aid or assist the applicant in filling out the form, including that particular part thereof which relates exclusively to information sought for information purposes?

A sale of shares made by a salesman under the provisions of Program A is a sale of life insurance also, because life insurance protection is included within and made a part of this plan. If a sale is made of shares only, it would be made under the provisions of Program B.

When the application form has been completed and delivered to one of the securities salesmen, I understand that it is to be forwarded by him to the First American National Bank of Nashville, Tennessee, where it is either accepted or rejected. When it is accepted it becomes an effective agreement and the applicant, if an applicant under Program A plan, has become a purchaser of shares in the Investment Trust of Boston, Inc., and a purchaser of life insurance protection upon his or her life for a sum equal to the amount owed for the shares but in no case more than \$10,000. The life insurance becomes effective upon acceptance of the application by the bank.

You have asked whether the individuals who sell the securities in Alabama and offer the insurance coverage should be licensed as life insurance agents. Based upon the facts as indicated above, I am of the opinion that your question should be answered in the affirmative.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

October 21, 1954

Hon. Bradley Brown, Director
Department of Revenue
Jefferson County
Birmingham 3, Alabama

Licenses—Laundries.

1. One who is qualified to pay and who has paid the laundry license under Title 51, Section 543, Code of Alabama 1940, as amended by Act No. 41, General and Local Acts 1951, page 85, is exempt from paying the linen supply service license under the proviso contained in Title 51, Section 542 (a), Code of Alabama 1940, as amended by Act No. 760, General and Local Acts 1953, page 1022.

2. The term "regular laundry" as used in Section 542 (a), as amended, supra, and the phrase "what is commonly known as a power or steam laundry" as used in Section 543, as amended supra, both contemplate a person who washes garments belonging to persons other than himself.

3. One who is due the linen supply service license under Section 542 (a), as amended, supra, must pay a state and county license in every city, town, or unincorporated place, where such service is provided, based on population.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, bearing date of October 4, 1954, is as follows:

"Alabama Overall Service, Division of the National Industrial Laundries, duly qualified to do business in Alabama, with its principal place of business in Birmingham, where it operates a large laundry for the purpose of laundering coveralls, towels and like items for industrial concerns using these items, operates a fleet of trucks and services customers in some fifteen or more counties in Alabama from its main plant in Birmingham.

"This company is licensed under Section 543 (steam laundry), Title 51, 1953 Cumulative Supplemental Code of Alabama 1940. In this connection inquiry has been made of me as to whether or not the payment by the taxpayer of the full license as required under the above mentioned Section 543 precludes the need for or necessity of the taxpayer to secure a

state and county license under the provisions of Section 542, Title 51, 1953 Cumulative Supplemental Code of Alabama 1940.

"The above mentioned company has been cited in several of the counties in which it serves its customers for a state and county license under Section 542, although maintaining but one place of business in Alabama, that being in Birmingham, Jefferson County. In some instances I am advised that authorities have endeavored to claim of the taxpayer a county license upon being shown that the state license has been paid. I know of no authority for a issuance of a county license as such. Therefore, I will appreciate your rendering me an official opinion to the following question:

"Does payment of license, as required by Section 543, Title 51, 1953 Cumulative Supplemental Code of Alabama 1940, in Jefferson County, which is the principal place of business for this taxpayer, preclude its having to pay license in any county in which it may do business under Section 542, Title 51, *supra*?

"As 1955 licenses are due at this time, I will appreciate an official opinion from you at your earliest possible convenience."

The additional facts submitted by the Alabama Overall Service are to the effect that the company at its Birmingham laundry plant launders garments belonging to certain industrial concerns and charges therefor independently of its linen supply and overall supply business.

Your question appears principally to be whether or not, under these alleged facts, the Overall Supply Service, having paid the laundry license in Jefferson County where it has its laundry plant, is exempt thereby under the proviso contained in Title 51, Section 542 (a), Code of Alabama 1940, as amended by Act No. 760, General and Local Acts 1953, page 1022, from the linen supply service license in the some fifteen counties in which it provides such service and where it does not maintain a laundry plant. The answer to your question is in the affirmative. This conclusion is reached by giving full consideration to the two statutes involved.

Title 51, Section 543, Code of Alabama 1940, as amended by Act No. 41, General and Local Acts 1951, page 85 (the laundry license), reads in material part as follows:

"For each person, firm, or corporation who operates **what is commonly known as a power or steam laundry**: In cities and towns of thirty-five thousand inhabitants and over, sixty dollars; in cities and towns of less than thirty-five thousand and not less than fifteen thousand inhabitants, thirty dollars; in cities and towns of less than fifteen thousand and not less than five thousand inhabitants, fifteen dollars; in all other places whether incorporated or not, ten dollars. . . ." (Emphasis added.)

Section 542, as amended, *supra* (linen supply service license), reads in pertinent part as follows:

“(a) Each person renting or supplying laundered towels, aprons, coats, linens, or supplying other similar service, except those persons engaged in the business of renting diapers who do not rent or supply laundered towels, aprons, coats or linens, in cities of one hundred thousand inhabitants or over, fifty dollars; in cities or towns of sixty thousand and less than one hundred thousand inhabitants, thirty-five dollars; in cities or towns of twenty-five thousand and less than sixty thousand inhabitants, twenty-five dollars; in cities and towns of ten thousand and less than twenty-five thousand inhabitants, fifteen dollars; all other places whether incorporated or not, ten dollars. Provided that this section shall not apply to **regular laundries** which have paid the licenses on laundries levied by this title.” (Emphasis added.)

Considering these two sections together, you will note that if a person is operating a regular power or steam laundry he is entitled to purchase and must, under the law, purchase a license under Section 543, as amended, *supra*. By the same consideration, if he has obtained such a license, he is exempt under the proviso contained in Section 542 (a), as amended, *supra*, from the license provided in Section 542, as amended, *supra*, even though he may also be carrying on a linen supply service in addition to operating a regular laundry. The question then narrows down to when he may be considered to be operating “what is commonly known as a laundry.” While it is true that the general definition of a laundry is a place where clothes are washed, this definition, when used to determine under various taxing statutes and regulatory laws what is commonly known or generally considered as a laundry, appears to be limited to those cases where the clothes washed or laundered belong to persons other than the one who operates the laundry. In other words, the phrase “regular laundry” must be interpreted to mean a place which washes or launders garments belonging to those other than the person who operates it. 24 Words and Phrases (Per. Ed.), Laundry, 313; **Commonwealth v. Philadelphia Toilet and Laundry Supply Co.**, 13 A. 2d 411, 412, 339 Pa. 261; **Shaw v. State Industrial Acc. Commission**, 254 P. 2d 207, 209; **People v. Thirty-fourth Street Hotel Co.**, 289 N. Y. S. 893, 895, 160 Misc. 243; and **People v. Jacobs**, 301 N. Y. 456, 95 N. E. 2d 702.

Therefore, where the person operating the laundry is washing exclusively garments which belong to him, such as the hotel in the **Thirty-fourth Street Hotel Company** case, *supra*, and does not launder other people's clothes or garments, then such person could not qualify as a “regular laundry” or as “what is commonly known as a laundry” as contemplated by the laundry license under Section 543, as amended, *supra*. Moreover, the proviso contained in Section 542 (a), as amended, *supra*, would not apply to him.

In the event that a person does become liable under the provisions of Section 542 (a), as amended, *supra*, a State and county license becomes due, by virtue of the express language of the statute, in every city, town, or unincorporated place where such linen supply service is provided, measured

by population. In computing the county license in these cases, the amount is one-half of that collected for the State. Title 51, Section 831 (c), Code of Alabama 1940, as amended by Act No. 700, General and Local Acts 1951, page 1207. There is no provision in Section 542 (a), as amended, supra, or Section 543, as amended, supra, or other statutory provision which would authorize in these cases the collection of a county license when no State license is due.

In view of the foregoing and under the facts presented, it appears that the Alabama Overall Service, in addition to its linen and overall supply service, is also operating what is commonly known as a laundry within the meaning of Section 543, as amended, supra, and is required to pay a laundry license under that section. Having paid such license, it is exempt under the proviso contained in Section 542 (a), as amended, supra, from paying the linen supply service license in any of the counties in this State where it is providing such service.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

October 26, 1954

Mrs. Marie B. Owen, Director
Department of Archives and History
State of Alabama
Capitol

Archives and History, Department of—Records.

The Director of the Department of Archives and History has discretionary authority to destroy duplicate copies of records on file in said Department.

Opinion by Assistant Attorney General Sanders.

Dear Mrs. Owen:

Your request for an official opinion, bearing date of October 12, 1954, is as follows:

"The time has come when we feel that we must do away with some of the duplicate material from the different Departments of State that this Department has been housing. At present we are especially interested in the reports of the Examiner of Accounts made to the Governor which

have been delivered to this Department. These are duplicates of the reports on file with the Examiner of Accounts records in this Department¹.

"I am asking you please to give an opinion as to whether we can destroy the duplicates of these reports or the files from any Departments which we know are duplicates."

It is my opinion that your inquiry should be answered affirmatively.

Section 3 of Act No. 293, General Acts 1945, page 486 (Title 55, Section 289(8), 1953 Cumulative Pocket Part, Code of Alabama 1940), provides as follows:

"Section 3. DESTRUCTION OR DISPOSAL OF PUBLIC RECORDS REGULATED.—Any public records, books, papers, newspapers, files, printed books, manuscripts or other public records **which have no significance, importance, or value**, may, upon the advice and recommendation of the custodian thereof and upon the further advice, recommendation and consent of the Director of the Alabama State Department of Archives and History be destroyed or otherwise disposed of. The Department of Archives and History is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary or proper to carry the provisions of this section into effect." (Emphasis supplied.)

It will be noted that this statute gives to the custodian of any public records, acting upon the advice and consent of the Director of the Department of Archives and History, the discretionary authority to destroy any records which have no significance, importance or value. If this authority applies in the case of original copies of public records, it must, *a fortiori*, apply in the case of duplicate copies. Consequently, in the instant case, where the Director is also the custodian of the records in question, it is solely a matter for the Director's discretion whether or not such records have any significance, importance or value. If not, they may be destroyed.

It is, of course, a criminal offense to destroy public records, except under certain conditions. Title 14, Section 18, Code of Alabama 1940, and Section 2, Act No. 293, *supra*. Section 3 of the latter Act, quoted above, is, however, a statutory exception to this general prohibition. Also, I have discovered no statute which requires the Department of Archives and History to preserve duplicate copies of reports made by the Examiner of Public Accounts, or, in fact, requires it to preserve duplicate copies of the records of any other State agencies or departments. Considerations of the total bulk of all public records, the limited amount of storage space available and the facility with which documents may now be reproduced, all support the conclusion that the preservation of original copies only is a sufficient compliance with the spirit as well as the letter of the law.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

October 27, 1954

Hon. George P. Quarles
Judge of Probate
Dallas County
Selma, Alabama

Dallas County—Coroners—Costs and Fees—Statutes.

1. Act No. 761, General and Local Acts 1953, page 1022, did not repeal Act No. 48, Local Acts 1943, page 23.
2. The Coroner of Dallas County is entitled to the fee and mileage prescribed by Act No. 48, Local Acts 1943, page 23, for conducting preliminary examinations of dead bodies without the aid of a physician.
3. The Coroner of Dallas County is only entitled to that compensation prescribed by the general law for performing the services for which a fee is prescribed by said general law.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of October 1, 1954, is as follows:

"Will you please give me an official opinion on the following questions. Your prompt attention will be greatly appreciated.

"Local Act No. 48, approved May 28, 1943, which appears on Page 23 of Local Acts of Alabama 1943, reads in part as follows:

"Section 2. That the Coroner of Dallas County, Alabama, shall receive as his compensation for the investigation of each death, the sum of \$2.50 and in addition thereto shall be allowed the sum of 5c per mile for actual miles traveled in the performance of his duties; said compensation to be in addition to that now allowed by law."

"Act No. 761, approved September 17, 1953, which appears on Page 1022 of Acts of Alabama, Regular Session, 1953, amends Section 94, Title 11, Code of Alabama (1940), relating to coroners' fees. The following fee is set out in this act:

"For attending post mortem examination, where no jury is summoned, and returning opinion of surgeon or physician, six cents for each mile

traveled in going and returning, and seven dollars and fifty cents to be paid, and to be taxed as costs in the same manner as fees for holding inquests.'

"The questions we wish answered are as follows:

"Is the coroner of Dallas County entitled only to \$7.50 per investigation as set out in the general law of 1953, or is he entitled to this \$7.50 plus the additional \$2.50 which was granted by the 1943 local law?

"Does the 1953 general law nullify the 1943 local law?"

The opinion reported in Quarterly Report of Attorney General, Vol. 24, page 88, rendered July 28, 1941, held that the coroner is not entitled to fees and mileage, under the general law, for conducting preliminary examinations of dead bodies without the aid of a physician. This opinion, so far as here applicable, is quoted as follows:

"It must be noted at the outset that the duties of the coroner with respect to dead bodies, when the cause of death is unknown and no physician was in attendance upon the deceased at or prior to time of such decease, are definitely provided by law. First, a preliminary examination of such dead body must be performed. Section 78 of Title 15 of the Code of 1940, provides in pertinent part as follows:

"* * * When a coroner has been informed that a person is dead in the county, and that said person died without being attended or examined by a legally qualified physician, the coroner shall forthwith proceed to the place where the dead person is lying, and examine the dead body to ascertain the cause of death, and report the same in the same manner as inquests are reported; * * *"

"This requirement of examination immediately upon information by the coroner is qualified, however, by further provisions of law found in the Code of 1940, Title 15, Section 76, which provides in pertinent part as follows:

"When a coroner has been informed that a person has been killed, or suddenly died under such circumstances as to afford a reasonable ground for belief that such death has been occasioned by the act of another by unlawful means, he must forthwith make inquiry of the facts and circumstances of such death by taking the sworn statement in writing of the witnesses having personal knowledge thereof, and submit the same to the judge of a court of record or a solicitor; * * *"

"While the circumstances surrounding the ascertainment of death are different, nevertheless, the examination of the dead body immediately upon reception of the information of death, by the coroner is required.

In those cases in which reasonable grounds for belief is afforded that such deaths were caused by the unlawful act of another, the coroner must take the sworn statements of the witnesses having personal knowledge thereof, and present the same to a judge or solicitor of a court of record.

"Concerning compensation of the coroner and mileage for conducting the examinations named above, I must advise that it is my opinion that none is provided by law and none can be paid. The coroner is a public officer, and subject to the provisions of law governing the payment of fees of public officers (See Code 1940, Title 12, Section 54)."

Section 1 of Act No. 48, Local Acts 1943, page 23, reads as follows:

"Section 1. That the Coroner of Dallas County, Alabama, shall perform all of the duties and receive compensation therefor, as heretofore required of the Coroner by the laws of Alabama, and in addition thereto it shall be the duty of such Coroner to investigate the death of person or persons killed or who died as result of accident, or those who died under such circumstances as to afford a reasonable ground for belief that such death resulted by the act of another by unlawful means or those who died without the attendance of a practicing physician. Said Coroner, in the absence of a physician, shall forthwith make inquiry into such death or deaths and shall sign the death certificate in his official capacity. Upon such investigation said Coroner shall take into his possession the body of the deceased, together with his or her personal effects, and hold same in a suitable place until claimed by the relatives, administrators, executors or heirs of the deceased, or as otherwise provided for by law. The purposes of this Act should not be construed to in any way change the present law as to the holding of inquisitions."

Section 2 of Act No. 48, *supra*, is quoted in your request.

Act No. 48, *supra*, does not provide additional compensation for those services of the coroner for which a fee is provided by the general law, but prescribes the amount of the fee and mileage to be paid the coroner for conducting preliminary examinations of dead bodies.

Therefore, Act No. 761, General and Local Acts 1953, page 1022, which amended Title 11, Section 94, Code of Alabama 1940, by increasing the amount of coroner's fees, did not repeal Act No. 48, *supra*.

Premises considered, I am of the opinion that the Coroner of Dallas County is entitled to the fees and mileage prescribed by the general law for performing the services enumerated therein. He is also entitled to the fee and mileage prescribed by Act. No. 48, *supra*, for conducting preliminary examinations of dead bodies without the aid of a physician for which no fee is provided for under the general law.

It is the policy of this office not to express an opinion as to the constitutionality of an act. However, it should be pointed out that Amendment XCII to the Constitution of Alabama 1901 provides that the Legislature shall not increase the fees of any state or county officer during the term for which he is elected or appointed. This Amendment should be considered in regard to whether Act No. 761, *supra*, is applicable during the current term of the Coroner of Dallas County.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

October 29, 1954

Hon. Joe H. Williams
Superintendent of Banks
State of Alabama
Capitol

Banks and Banking—Credit Unions—Funds.

Member of credit union may purchase shares in his or her name and that of another person and the survivor, and thus maintain a joint share account with some person who is not necessarily a member of the credit union.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of September 13, 1954, is as follows:

"One of the State chartered credit unions under the supervisions of the Department of Commerce, Bureau of Banking, has requested an opinion on the following question:

"Is it legal for a member of the Industrial Relations Credit Union to maintain a joint share account with an individual who is not eligible for membership in this Credit Union?

"Since similar questions have been raised by some of the other credit unions, we believe you should issue a written opinion so that it may be released to other credit unions that have similar problems."

I am of the opinion that your question should be answered in the affirmative.

Title 28, Section 294, Code of Alabama 1940, makes provision for the ownership of credit union shares being vested in the names of two persons and the survivor. The pertinent part of this statute is quoted as follows:

" . . . Shares may be issued in the names of two persons and the survivor and in the event of the death of either the credit union shall be liable thereon only to the survivor and while both are living payment to either shall discharge the liability to both."

I am of the opinion that a member of the Industrial Relations Credit Union may, pursuant to provisions of Section 294, supra, purchase shares in the credit union in his or her name, individually, or may have the shares issued in his or her name and the name of another person and the survivor. In other words, the shares may be issued as a joint account with the right of survivorship; and, in the event of the death of either, the credit union would be liable only to the survivor for the value of said shares. If the shares are issued in such joint account as contemplated above, it is my opinion that payment to either, while yet in life, would serve to discharge the liability to them both.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

November 3, 1954

Dr. W. J. Terry
State Superintendent of Education
State of Alabama
Montgomery, Alabama

State Board of Education—Schools.

1. The State Board of Education may adopt a resolution establishing tenure for trade school employees.

2. The State Board of Education may not adopt an annual and sick leave program for trade school employees.

Opinion by Assistant Attorney General Sanders.

Dear Sir:

Your request for an official opinion, bearing date of August 6, 1954, is as follows:

"Your office ruled under date of September 29, 1951, recorded in Volume 64, page 86, Attorney General's Ruling, that employees of state trade schools are not covered by the teacher tenure law of Alabama.

"In light of the above cited ruling, the State Board of Education has under consideration a resolution which would establish tenure rights of employees of the state trade schools. The resolution also sets up certain procedures such personnel may follow in exercising their rights under the proposed resolution. A copy of the resolution is attached.

"My question to you is whether the State Board of Education is acting within its legal scope in the adoption of the proposed resolution and what status the resolution would have before the courts."

The resolution which you have attached to your request is as follows:

"Resolution No. 9

"A RESOLUTION

"WHEREAS, the Alabama Legislature of 1947, Act #673, provided for the establishment and operation of state vocational trade schools, and

"WHEREAS, under the provisions of this Act, it is stated 'The State Board of Education, upon recommendations of the State Superintendent of Education, shall: Make rules and regulations for the government of the trade schools, prescribe the courses of study to be offered and the conditions for granting certificates or diplomas; appoint the president of each trade school, and, upon the president's recommendation, appoint the members of the faculty and fix tenure and salary of each.'

"THEREFORE BE IT RESOLVED: Any regular payroll employee having completed three years of satisfactory service will have achieved tenure as follows:

"1. He will have achieved continuing service unless and until duly and properly notified to the contrary two weeks prior to termination date.

"2. He shall not be discharged without just and reasonable cause.

"3. In case of dismissal he shall have the right of appeal to a state trade school tenure committee composed of the State Director of Vocational Education, the State Supervisor of Trade and Industrial Educa-

tion, and the Assistant State Supervisor of Trades Training, provided notice of such appeal is filed with the State Superintendent of Education within ten days from date of dismissal action.

"4. In case an employee is not satisfied with the decision of the tenure committee, he shall have the right of appeal to the State Board of Education, provided notice of such appeal is filed with the State Superintendent within ten days from date of action by tenure committee.

"5. He shall have the right of counsel and may present whatever witnesses which he feels necessary to his particular case.

"6. In case of appeal, the employee shall not be removed from the payroll prior to a decision by the tenure committee.

"7. A Trade School Director may be removed from office only by action of the State Board.

"BE IT FURTHER RESOLVED:

"1. That regular employees of state vocational trade schools shall acquire annual leave at the rate of one day per month to a maximum of twenty-four days.

"2. Regular employees of state vocational trade schools shall acquire sick leave at the rate of one day per month to a maximum of sixty days.

"This provision shall apply only to personnel whose employment is made possible through State appropriation."

The opinion to which you refer (Quarterly Report of Attorney General, Vol. 64, page 86) held that teachers, instructors, principals, supervisors, and other faculty members of state trade schools are not covered by the provisions of the Teacher Tenure Act (Title 52, Sections 351, et seq., Code of Alabama 1940), because they are not employed in the public elementary or high schools, as is required under said Act, and because the State Board of Education is given the authority, under the statute dealing with trade schools (Act No. 673, General Acts 1947, page 514 (Title 52, Sections 451(1)-(6), 1953 Cumulative Pocket Part, Code of Alabama 1940)), to "fix the tenure" of such persons, and consequently they serve at the pleasure of said Board.

From the facts set out in your letter it appears that the Board is now seeking to accomplish, by means of the foregoing proposed resolution, the desired results of providing both tenure and annual and sick leave programs for teachers—in fact, for all "employees"—in State trade schools. In my opinion, the portion of this resolution which pertains to tenure may lawfully be adopted, but there is no legal authorization for that portion which provides for an annual and sick leave program.

It has already been noted that teachers in State trade schools are not covered by the provisions of the Teacher Tenure Act. The only provision in this regard is found in Act No. 673, *supra*. In pertinent part, it gives to the State Board of Education authority to "appoint the president of each trade school and, upon the president's recommendation, appoint the members of the faculty and fix the tenure and salary of each." If the Board can fix the tenure of "each," then it can also fix the tenure of all, and this is precisely what the first portion of the proposed resolution attempts to do. If the Board has unlimited discretion in its power to hire and discharge faculty members, then clearly it can, if it so chooses, limit this power by adopting a plan providing for tenure, appeal from dismissal, etc.

Authority for this conclusion is found in the case of *Ironside v. Tead*, 13 N. Y. S. 2d 17, holding that the New York Board of Higher Education had authority to adopt bylaws providing for permanent tenure for faculty members of colleges under its jurisdiction. (The bylaws there in question were adopted after an act of the Legislature providing for tenure had been declared unconstitutional, for reasons not here pertinent.)

This same reasoning applies in the case of other employees who are not faculty members. The Board's authority to hire and dismiss such employees is not specifically stated and must be found in its general authority to manage and control the trade schools and to fix rules and regulations for their operation. Act No. 673, *supra*. I know of no reason why the Board may not impose upon itself restrictions upon its exercise of such powers, as they relate to other employees, just as in the case of faculty members.

It is only fair to point out, however, that this plan for tenure will remain in effect only so long as the Board's resolution remains in effect. Being only a resolution, it may be amended or repealed by the Board at any time. As was stated in the *Ironside* case, *supra*:

"... The difference between an act of Legislature and a by-law was merely that when the Legislature assumed to act the Board was bound by the provisions of law; whereas, it could always repeal a by-law adopted and change its policy, unless such by-law was declarative of an act of Legislature. The by-laws as to tenure not resting upon a present act of Legislature, could be amended or even repealed at will by the Board itself. . . ."

So far as the annual and sick leave program is concerned, however, a different conclusion must be reached. This program involves the expenditure of public funds specifically allocated for the operation and maintenance of the trade schools, for salaries during temporary absences of employees and consequently without any compensating service being received by the schools for such expenditure. However beneficial and desirable this program may be, nevertheless the granting of such benefits must, as a general rule, be authorized by statute. An occasional absence of sickness, or some other unavoidable cause, need not be penalized by loss of pay—this office has so

ruled, in the case of county employees. Quarterly Report of Attorney General, Vol. 68, page 48. See also, **Averell v. Newburyport**, 241 Mass. 333, 135 N. E. 463. Furthermore, it has been held that county governing bodies have authority, because of their broad discretion and powers over the buildings and maintenance of public roads and bridges, to give a paid vacation to their employees who work on roads and bridges. Quarterly Report of Attorney General, Vol. 51, page 89. In my opinion, these rulings should not be extended so as to permit a planned program of both annual and sick leave applicable to the trade school employees here involved.

This conclusion is supported by the fact that various specific statutory provisions have been enacted for annual and sick leave programs covering the teachers or employees of other schools and institutions. See, for example, Title 52, Section 136, Code of Alabama 1940, relating to teachers and employees of county boards of education; Title 52, Section 197, Code of Alabama 1940, as amended by Act No. 313, General Acts 1943, page 300, relating to teachers and employees of city boards of education; Act No. 236, General Acts 1945, page 357 (Title 52, Section 40(4), 1953 Cumulative Pocket Part, Code of Alabama 1940), relating to "teachers employed in public elementary and high schools"; Act No. 688, General and Local Acts 1951, page 1190 (Title 52, Sections 534(2)-(4), 1953 Cumulative Pocket Part, Code of Alabama 1940), relating to teachers employed by the Alabama Institute for Deaf and Blind. None of these statutes applies to teachers or employees of State trade schools. Yet, if statutory authorization was necessary in the case of other schools and institutions so should it be here.

I conclude that there is no legal authority for the adoption of the portion of the resolution which provides for annual and sick leave.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

November 4, 1954

Hon. James G. Adams, Jr., Member
House of Representatives
Jefferson County
421 Massey Building
Birmingham, Alabama

Barber Commission—Jefferson County—Counties—Courthouses.

The County Commission of Jefferson County is not required to furnish office space, in the courthouse or elsewhere, to the Barber Commission of Jefferson County, and any cost of obtaining such space is to be paid out of the separate fund of the Barber Commission.

Opinion by Assistant Attorney General Sanders.

Dear Sir:

Your request for an official opinion, bearing date of September 15, 1954, is as follows:

"A question has arisen in my County over Barber Commission Act applying to Counties of 400,000 population reported in Acts 1951, page 1125 and shown in title 62, pages 79, 80 and 81.

"I would like an Attorney General's opinion on whether or not under this act the Barber Commission, who is presently being furnished with a room by the County Governing body of Jefferson County, namely: The Jefferson County Commission, are chargeable and will have to pay rent for occupying an office in the County Court House which, of course, is under the supervision of the County Commission.

"I helped pass this act in the Legislature in 1951 and we passed an amendment in 1953 on page 872, 1953 Acts and as far as I am personally concerned, I certainly did not contend that they should be required to pay room rent for an office to operate out of. I personally don't see why this body created by the Legislature namely Barber Commission and Inspector should be required to pay rent any more than any other office created by the Legislature in the County.

"I would greatly appreciate you studying this act and rendering an opinion as the State Auditor's office in the County would like to know, the Barber Commission would like to know and I as one of the authors of the bill would like to know. When you render this opinion, please send me a copy and a copy to the Barber Commission, 2nd Floor, County Court House, Birmingham, Alabama."

I am of the opinion that the Barber Commission of Jefferson County must, under the terms of the Act creating it, obtain its own office space and pay the cost thereof out of its own funds.

Act No. 661, General and Local Acts 1951, page 1125, as amended by Act No. 614, General and Local Acts 1953, page 872, superseding Title 62, Sections 253-258, Code of Alabama 1940 (Title 62, Section 258(1)-(6), 1953 Cumulative Pocket Part, Code of Alabama 1940), provides for the licensing and regulating

of barbers and barber colleges, and creates a Barber Commission with general regulatory and supervisory powers over these matters. By its terms, the Act applies only to counties having a population of 400,000 or more, and hence is applicable solely to Jefferson County.

Section 3 of the Act creates the Barber Commission and provides for the terms and compensation of its members. This section further provides:

"The Commission shall obtain such office space, furnishings, and other conveniences as shall be reasonably necessary for carrying out the provisions of this subdivision."

Section 5 of the Act provides for the payment to the Commission, by the various types of persons subject to regulation, of original license fees and annual renewal fees. Section 3, *supra*, makes provision for the moneys thus collected, as follows:

"... All fees and charges collected by the Commission under the provisions of this subdivision shall be paid into the treasury of such county and shall constitute a separate fund to be disbursed by the county treasurer on order of the Board of Barber Commissioners with the approval of the chairman of the Board of county commissioners or like governing body of the county. **All expenses incurred by the commission, including the compensation of members and their employees shall be paid by the county treasurer out of such separate fund** upon checks signed by the chairman of said barber commission and approved by the chairman of the county governing body, provided that the total expenses for every purpose incurred shall not exceed the total fees and charges collected and paid into the county treasury by said barber commission and all moneys in excess of one thousand dollars remaining in said separate funds at the end of the fiscal year not expended as herein provided shall become a part of the general fund of the county." (Emphasis supplied.)

In my opinion, the above-quoted portions of the Act answer your inquiry. The only provision made for office quarters for the Commission is the one in Section 3, *supra*, which states merely that the Commission "shall obtain such office space . . . as shall be reasonably necessary." Rental for such space is "an expense incurred by the Commission" and must, under the provisions of that same section, be paid out of the separate fund consisting of the license fees which the Commission has collected.

The Act makes no provision for the furnishing of office space, in the County Courthouse or elsewhere, by the Jefferson County Commission. It is, of course, ordinarily the responsibility of this body, as well as all other county governing bodies, to provide office space for the various county agencies.

This responsibility is derived in part from Title 12, Section 12(1), Code of Alabama 1940, as amended in respects not here material, which provides as follows:

"The court (county governing body) has authority: 1. to direct and control the property of the county as it may deem expedient according to law, and in this direction and control it has the sole power to locate the courts in the rooms of the courthouse and to designate the rooms to be occupied by the officers entitled to rooms therein, including the circuit judge, if resident in the county, and to change the location of the courts, and the designation of the rooms for officers, as it may deem best and most expedient, and this shall be done by order of the court entered upon the minutes of the court at a regular term of court. In the event the courthouse is inadequate to supply office rooms for such officers, the court may lease such office rooms in a convenient location in the county site and to pay the rental from the county fund."

It will be noted that it is only officers (boards, commissions, etc., may be interpolated) who are "entitled to rooms" in the courthouse who must be given space there, or furnished quarters elsewhere if space in the courthouse is inadequate. Nowhere in the general law do I find anything stating that all county boards, commissions, etc., are entitled to be furnished office quarters by the county governing body. Certainly if the Act creating the agency in question is silent on the matter, and even more certainly, if in addition the agency has no appropriation or produces no revenue which could be used to defray the cost of obtaining quarters, the duty would then devolve upon the county governing body to make provision for obtaining office space. Quarterly Report of Attorney General, Volume 36, page 67.

In many cases, however, the Act creating an agency clearly shows a contrary intent. For instance, the comparable portion of the statute dealing with the regulation of the practice of cosmetology by the Jefferson County Board of Cosmetological Examiners provides, in pertinent part, as follows (Title 62, Section 288, Code of Alabama 1940, as last amended by Act No. 318, General and Local Acts 1953, page 374):

"... The Board shall obtain such office space, furnishings, and other proper conveniences as it shall deem reasonably necessary for carrying out the provisions of this subdivision. The county governing body may assign such to it in the courthouse provided that the actual cost to the county shall be paid by the Board. . . ."

The intention in this regard of the Act here in question (Act No. 661, supra) is not quite so clear, but it is, I believe, the same. It is evident that the Barber Commission was intended to be self-supporting to the extent that all of its "expenses" are to be paid out of its revenue. From the fact that the Commission is required to "obtain" necessary office space, and the further fact that no provision is made for the payment, out of general county revenues, of the cost of obtaining such space, it may fairly be deduced that such cost is one of the "expenses" which is to be defrayed from the special fund consisting of the license fees which the Commission collects. It follows that the county governing body is not obligated to provide rent-free quarters for the Barber Commission.

On the one hand, I know of no reason why, if there is a surplus of space in the county buildings which is not needed for county purposes, the county governing body could not permit the Barber Commission to occupy such space without charge. See Quarterly Report of Attorney General, Volume 18, page 164. The designation of such offices is a matter solely within the discretion and control of the county governing body. Quarterly Report of Attorney General, Volume 17, page 353. There would, however, be no authority for the expenditure of general county funds to obtain such space elsewhere.

On the other hand, if there is surplus space in the county buildings which is not needed for county purposes, the governing body may, if it so chooses, permit the Barber Commission to occupy such space only upon the payment by said Commission of reasonable rental. Quarterly Report of Attorney General, Volume 48, page 7; Volume 18, page 342.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

November 10, 1954

Hon. J. P. Shaffer, Clerk,
Montgomery County Board of Revenue,
Montgomery 4, Alabama

Funds—Depositories—County Treasurers—Counties—Federal Savings and Loan Associations.

Federal Savings and Loan Associations are not banks or trust companies in the sense that they are proper depositories for county treasurers in which such officers may deposit monies coming into their hands as such officers.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of October 20, 1954, is as follows:

“The Montgomery County Board of Revenue desires to use Investors Federal Savings and Loan Association of Montgomery, Alabama as a deposi-

tory for certain Fiduciary Funds due to the fact the institution pays interest on deposits and insures through the U. S. Government up to \$10,000.00.

"Is it a legal and proper depository for County Funds?"

It is provided by Act No. 333, General and Local Acts 1949, page 493, that the clerk of the Montgomery County Board of Revenue shall receive and safely keep all funds of the county in their proper accounts in a depository designated by the board, and shall disburse all funds of the county in the name of the board on his signature as clerk.

It is further provided by Act No. 333, *supra*, that in the handling of the funds of the county, the clerk shall be governed by all general laws pertaining to a county treasurer which are not in conflict with the provisions of the Act.

Under Title 12, Section 4, Code of Alabama 1940, as amended by Act No. 634, General and Local Acts 1949, page 975, the following is provided:

"Upon the application of the county tax collectors, county treasurers, probate judges, circuit court clerks, or registers of the circuit court, it shall be the duty of the court of county commissioners, boards of revenue, or other like governing body of the county to appoint a bank or trust company as a depository in which such officers may deposit monies coming into their hands as such officers; which appointment shall be by proper resolutions spread upon the minutes of such court, board of revenue or other governing body. Such court shall from time to time by resolution spread upon its minutes, make such requirements as may be deemed necessary for the safety of such funds so deposited, not inconsistent with the general laws of the state."

This office has held that under the above statutory provision more than one depository may be designated by the county governing body for use by the county treasurer. Biennial Report of Attorney General, 1934-36, page 145.

When Act No. 333, *supra*, is considered along with the general law as set forth in Section 4, as amended, *supra*, it is my opinion that the county governing body, on application of the clerk of the Montgomery County Board of Revenue, must appoint a bank or trust company as the proper depository for the funds of the county.

It has been said that the primary and ordinary conception of a trust company is a corporation or institution organized to take and administer trusts rather than carry on the ordinary functions of banking. A bank, on the other hand, is usually conceived of as an association or corporation whose business it is to receive money on deposit, cash checks or drafts, discount

commercial paper, make loans, and issue bank notes. 9 C. J. S., Banks and Banking, Section 1044.

It has also been said that a savings bank is entirely different from a commercial bank in its foundation, its place in the social structure, and its methods of business. One feature of savings banks is that both their deposits and investments are, as a rule, of a more permanent character than those of commercial banks, and savings banks adopt plans to restrain the depositor from making calls for any considerable amount of his deposit. 9 C. J. S., Banks and Banking, Section 957; see also Quarterly Report of Attorney General, Vol. 55, page 150.

Federal Savings and Loan Associations are provided for by Title 12, Section 1464, U. S. C. A., which provides in part as follows:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

It is seen from the above that the principal objective of these associations is to encourage local mutual thrift and the building of homes. The objectives and purposes of Federal Savings and Loan Associations differ materially from the usual conception of commercial banks and trust companies. When these different matters are considered, it is my opinion that Federal Savings and Loan Associations are not banks or trust companies in the sense that they are authorized to act as depositories for county treasurers in which such officers may deposit monies coming into their hands as such officers.

I have examined a copy of the charter of Investors Federal Savings and Loan Association and do not find anything therein which militates against the view expressed herein.

It is my opinion, therefore, that your question should be answered in the negative.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

December 3, 1954

Hon. C. C. Horton, Director,
Department of Veterans' Affairs,
Capitol

Veterans—Military and Naval Affairs—Schools—Colleges and
Universities.

1. The United States is still engaged in hostilities with a foreign state, within the meaning of Act No. 47, General and Local Acts 1951, page 259, as amended by Act No. 975, General and Local Acts 1951, page 1648, there having been no treaty or legislation or Presidential Proclamation ending the Korean conflict.
2. The "Korean Armistice Agreement" signed at Panmunjom, Korea, at 10:00 P. M., July 27, 1953, Korean Time, July 26, 1953, at 9:00 P. M., Eastern Daylight Saving Time, and the cease-firing at 9:00 A. M., July 27, 1953, did not terminate the Korean conflict.
3. The wife and children of a person who served in the Armed Forces after June 24, 1950, and who died in line of duty after July 27, 1953, are entitled to the educational benefits under Act No. 47, as amended, *supra*.
4. The widow and children of a person who enters service in the Armed Forces after July 27, 1953, and dies in line of duty before the Korean conflict is terminated by treaty or legislation or Presidential Proclamation, or by some other lawful means, are entitled to the educational benefits under Act No. 47, as amended, *supra*.
5. The widow and children of a person who enters service in the Armed Forces after July 27, 1953, and dies of a service-connected disability after discharge and within twenty years from June 24, 1950, are entitled to the educational benefits under Act No. 47, as amended, *supra*, provided such person is honorably discharged and has the required ninety days' service, or is honorably discharged after serving less than ninety days by reason of a service-connected disability.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of November 30, 1954, is as follows:

"May we request that this matter be given immediate attention and that I be furnished your opinion as soon as feasibly possible? I realize that your office is over burdened with work at the present time, but by reason of pending applications in my department on behalf of dependents of deceased servicemen who wish to enter college under the Alabama G. I. and Dependents Educational Benefit Act in the semester beginning the first of January, it is necessary that the opinion be forthcoming without delay.

"Under Alabama Act No. 47, approved May 24, 1951, as amended by Act No. 975, approved September 12, 1951 Section 82(1), Title 60, Code of Alabama, 1940, any child whose father or mother, or any widow whose husband 'was killed or died in line of duty in the armed forces **at any time after June 24, 1950 when the United States was, is or shall be engaged in hostilities with any foreign state, whether as a result of a declared war or not**, or was reported missing in action during such time and was subsequently declared to be dead by the Department of Defense, or died within 20 years after having entered the armed forces, which entrance must have been subsequent to June 24, 1950, from a service-connected disability incurred during such time after being discharged or released under conditions other than dishonorable after serving at least ninety days in the armed forces, or discharged or released therefrom by reason of a service-connected disability after service of less than ninety days', may attend any Alabama State institution of higher learning or State trade school free of tuition and fees. (Underscoring supplied.)

"The Korean Truce was signed (United States time) on July 26, 1953, (Korean time) July 27, 1953, which supposedly ended hostilities. We presently have and will continue to have submitted to us applications for these benefits from widows and children of servicemen who entered service after June 24, 1950 and died in line of duty after July 27, 1953, and also those who entered service after July 27, 1953 and died in service in line of duty subsequent thereto. There will also be cases where the servicemen entered service after July 27, 1953 and die of service-connected disability incurred subsequent to that date.

"Under federal law, Public Law 550, 82d Congress, 'The Veterans' Readjustment Assistance Act of 1952,' veterans are entitled to education and training benefits if they serve the required period between June 27, 1950 and a future ending date as shall be determined by Presidential proclamation or concurrent resolution of the Congress. Likewise, the federal government pays disability compensation at wartime rates to veterans who have incurred disabilities in the service between June 27, 1950 and a future date as shall be determined by Presidential proclamation or concurrent resolution of the Congress; the same being true for the dependents of such veterans (Public Law 28, 82d Congress). It will therefore be seen that under federal law, service in the armed forces on or after June 27, 1950 and prior to such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress is considered as war service.

"The question for determination is whether eligibility for the benefits under Alabama Acts 47 and 975 shall, as to service requirements, parallel the federal law. There has been no statement issued for publication by the President or any committee of the Congress as to why no Presidential proclamation or concurrent resolution of Congress has been issued terminating the Korean conflict, but we might assume it is determined that hostilities have not completely ended or that there is possibility of renewed conflict.

"State laws are often enacted to parallel federal statutes and we believe that such was intended by the Alabama Legislature. For instance, Section 4 of Alabama Act 47 provides certain limited benefits to veterans themselves, but the last sentence of said section provides that no veteran shall be entitled to such correspondence or extension course during the time he or she is receiving educational benefits under the Servicemen's Readjustment Act of 1944, as amended, or if he or she has already received maximum benefits to which he or she was entitled under the Servicemen's Readjustment Act of 1944, as amended.'

"Specifically, your opinion is requested on the following:

"1. If a member served in the armed forces after June 24, 1950 and died in line of duty after July 27, 1953, are his wife and children entitled to benefits under Alabama Act 47, as amended by Act 975?

"2. If a member enters service after July 27, 1953 and dies in line of duty before the Korean conflict is terminated by Presidential proclamation or concurrent resolution of Congress, are his widow and children entitled to benefits under said Acts?

"3. If a member enters service after July 27, 1953 and dies of a service-connected disability after discharge and within twenty years from June 24, 1950, are his widow and children entitled to benefits under said Acts?"

This office has heretofore held in an opinion reported in Quarterly Report of Attorney General, Vol. 63, page 35, that a person serving as a member of the Armed Forces of the United States during the Korean conflict is serving during a period of time when the United States "is engaged in a war," within the meaning of such term as used in Section 1 of Act No. 502, General Acts 1945, page 727, providing that hunting or fishing licenses were not required of members of the Armed Forces of the United States during any period of time in which the United States is engaged in a war.

So, having been engaged in a war, the real question presented by your request is whether or not the execution of the "Korean Armistice Agreement" at Panmunjom, Korea, signed at 10:00 P. M., July 27, 1953, Korean Time, July 26, 1953, at 9:00 P. M., Eastern Daylight Saving Time, and the cease-firing at 9:00 A. M., July 27, 1953, constitutes an end or termination of the engagement in hostilities.

In a letter of this office addressed to Hon. Vance Cleveland, Tax Collector, Bibb County, Alabama, dated January 21, 1954, the same question was considered, and it was there stated as follows:

"In a letter of this office addressed to the Director of the Department of Conservation, dated September 15, 1953, the effect of the Korean Armistice Agreement was discussed at length and the following pertinent observations made:

"'. . . The above-quoted portions of the agreement, together with a consideration of the full context thereof and the present status of world affairs, leads me to the conclusion that said agreement (purely military in character) merely constitutes and effectuates a temporary cessation of hostilities pending further negotiations in regard to a final peaceful settlement, which should be accomplished within the period of 3 months from the date of said agreement. It may be true that pursuant to said agreement a ceasefire status resulted, but there is nothing to insure that such status will continue even for the 90-day period much less beyond that time.

"'War does not cease with a "cease-fire" order, and a "state of war" is not terminated by the cessation of hostilities, where the United States still has armies abroad, exercising a war power and no peace terms have been made. *Ludecke v. Watkins*, 335 U. S. 160, 92 L. Ed 1881, 68 S. Ct. 1429. See the case of *State v. Gibson* (Alabama Supreme Court), 64 So. 2d 75, wherein a statement made in the case of *Hijo V. United States*, 194 U. S. 315, 323, 24 S. Ct. 727, 48 L. Ed. 994.

"'A truce or suspension of arms . . . does not terminate the war, but it is one of the *commercium belli* which suspends its operations. . . . At the expiration of the truce, hostilities may recommence without any fresh declaration of war.'" was cited with approval.

"'In view of the above, I am of the opinion that the Korean conflict has not, as yet, been ended or terminated; . . .'

"In my opinion the United States is still 'engaged in hostilities' within the meaning of the poll tax amendment, above-quoted, despite the temporary cessation of hostilities and the resulting cease-firing status. The exemption therein granted is still applicable to one in the Armed Forces of the United States as of the present date.—Cf. Quarterly Report of Attorney General, Vol. 62, page 15."

Subsequent to the letter to Hon. Vance Cleveland, *supra*, this office held in another opinion to the Director of the Department of Conservation, dated September 22, 1954, that members of the Armed Forces of the United States are not required to obtain hunting or fishing licenses because the United States is still "engaged in a war" within the meaning of Act No. 502, *supra*. In this letter, I cited the case of *Ludecke v. Watkins*, 335 U. S. 160, 92 L. Ed. 1881, 68 S. Ct. 1429, which holds:

"The 'state of war' may be terminated by treaty or legislation or Presidential Proclamation. Whatever the mode, its termination is a political act."

The conclusion then was that, since there has been no treaty or legislation or Presidential Proclamation terminating the Korean conflict, the United States is still engaged in a war, within the meaning of Act No. 502, *supra*.

Since the opinion of this office under date of September 22, 1954, *supra*, there has not, to my knowledge, been any treaty or legislation or Presidential Proclamation, or other lawful means, terminating the Korean conflict. In the absence thereof, I am of the opinion that the United States is still engaged in hostilities with a foreign state, within the meaning of Act No. 47, General and Local Acts 1951, page 259, as amended by Act No. 975, General and Local Acts 1951, page 1648, and that the Korean Armistice Agreement did not constitute an ending or termination of the hostilities.

It is my opinion, therefore, that your first question should be answered in the affirmative.

Your second question is also answered in the affirmative, provided the death occurs in line of duty before the Korean conflict is terminated by treaty or legislation or Presidential Proclamation, or by some other lawful means.

Your third question is likewise answered in the affirmative, provided the member is honorably discharged and has the required ninety days' service, or is honorably discharged after serving less than ninety days by reason of a service-connected disability.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239.
Code of Alabama 1940).

December 3, 1954

Hon. O. E. Cole, Chairman
The County Commission
Russell County
Phenix City, Alabama
Elections—Poll Tax and Poll List—Voters.

1. A general election and an election on proposed constitutional amendments, held on the same day and conducted by the same group of election officials, are separate and distinct elections.
2. When a general election and an election on proposed constitutional amendments are held on same day, the judge of probate must furnish the election inspectors in each voting place with two lists of the qualified electors for such voting place.
3. The judge of probate may employ assistants and clerical help to prepare the lists of qualified electors needed in each election when two elections are held on the same day.
4. By virtue of Title 17, Section 55, Code of Alabama 1940, as amended by Act No. 385, General and Local Acts 1951, page 677, claims for preparing lists of qualified electors for use in two elections held on the same day are valid.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of November 1, 1954, is as follows:

"There have been filed with the County Commission for Russell County, two claims for compiling and preparing voters lists, for use on November 2, 1954, viz.,

"One claim for lists for Constitutional Amendment proposals
One claim for lists for the General Election

"Act #427—General and Local Acts of 1951, page 762, amending Section 284—Constitution of Alabama 1901, proclaimed ratified December 19, 1951, states in substance that the election officials for the General Election, shall also conduct the election for the proposed amendments, where both elections are held on same date.

"Title 17, Section 40, Code of Alabama 1940, as amended, specifies only one copy of qualified electors be delivered by the Judge of Probate to the inspectors in each polling place, immediately preceding every general, primary or special election.

"Act #201, Acts of Alabama, Regular Session 1953, page 266, approved July 16, 1953, provides that the voter himself shall sign his name on one of the poll lists, or lists of persons who vote in the election, etc.

"Concerning the coming General election, we are without knowledge of any requirement for the election officers to require the qualified voter to sign his name, other than on the one list, as provided in Act #201, thereby being entitled to cast his ballots for both the General and proposed Amendments election.

"Therefore, only one copy or list of qualified electors would appear to be needed.

"An official opinion is respectfully requested as to the validity of the claim filed for

"COMPILING AND PREPARING VOTERS LISTS FOR CONSTITUTIONAL AMENDMENT PROPOSALS."

The opinion reported in Biennial Report of Attorney General, 1920-22, page 6, held that a general election and an election on proposed constitutional amendments held on the same day are separate and distinct elections, even though they are conducted by one group of election officials. This opinion further held that separate election supplies must be furnished the election officials for use in each of these elections.

That part of Section 284, Article XVIII, Constitution of Alabama 1901, providing that the officers of the general election shall open a poll for the vote of the qualified electors upon the proposed constitutional amendments, has not been amended since said opinion was rendered. Therefore, it is my opinion that the judge of probate, by virtue of Act No. 655, General Acts 1947, page 504, was required to furnish the election inspectors at each voting place with two lists of the qualified electors for such voting place on November 2, 1954, one for use in the general election and the other for use in the election on the proposed constitutional amendments. See also Act No. 492, General Acts 1947, page 331, amending Title 17, Sections 38 and 40, Code of Alabama 1940, and Quarterly Report of Attorney General, Vol. 74, page 84.

Act No. 385, General and Local Acts 1951, page 677, amended Title 17, Section 55, Code of Alabama 1940, to read, in part, as follows:

"CLERICAL ASSISTANTS TO MAKE INSPECTORS' LIST.—The judge of probate may employ such assistants and clerical help as may be necessary to complete and properly prepare the list of qualified electors which the judge of probate is required to furnish the election inspectors. Such assistants shall be paid out of the county treasury by warrants, drawn by the commissioners court, board of revenue, or other governing body, on certificate of the probate judge, accompanied by the certificates of the person being paid, showing the amount is due under the provisions of this article; but the entire amount spent for such assistants and clerical help shall not exceed a sum equal to the amount obtained by multiplying the number of names on said list by five cents. . . ."

By virtue of Act No. 385, supra, each time assistants and clerical help are employed to complete and properly prepare the lists of qualified electors to be furnished election inspectors, said assistants and clerical help may be paid in the manner and at the rate prescribed by said act. Opinion to Hon. Isaac Johnson, Jr., Judge of Probate, Lawrence County, under date of May 7, 1954. See also Quarterly Report of Attorney General, Vol. 66, page 38, Vol. 48, page 106 and Vol. 8, page 198.

Premises considered, I am of the opinion that both claims mentioned in your request, the claim for preparing the lists of qualified electors for use in the general election and the one for preparing said lists for use in the election on the proposed constitutional amendments, are valid and should be paid.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

December 16, 1954

Hon. C. C. Horton
Director State Department of Veterans' Affairs
Capitol

Ad Valorem Taxes—Veterans—Exemptions.

1. An incompetent veteran is not entitled to the exemption from ad valorem taxes under Title 51, Section 2 (p), Code of Alabama 1940, as amended by Act No. 953, General and Local Acts 1951, page 1626, unless and until such exemption is claimed by him, or by someone in his behalf, before the third Monday in January of the current year.
2. Failure to claim such an exemption waives the right thereto.
3. Under Act No. 344, General and Local Acts 1951, page 632, and Title 51, Section 84, Code of Alabama 1940, as amended by Act No. 141, General Acts 1947, page 45, one no longer has to come in each year and claim an exemption from ad valorem tax, but must have come in initially and made such claim.
4. Title 51, Section 328, Code of Alabama 1940, is not applicable to exemptions from ad valorem taxes, where such exemptions have not been timely claimed.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, bearing date of November 29, 1954, is as follows:

"Section 2 (p), Title 51, Code of Alabama, 1940, provides that the property of all incompetent veterans to the value of two thousand dollars shall be exempt from ad valorem taxation. By Act No. 953, approved September 12, 1951, which became effective October 1, 1951, said Section 2(p) was amended increasing the exemption to three thousand dollars.

"I would appreciate your opinion as soon as conveniently possible as to whether an incompetent veteran is entitled to such exemption as a matter of right from the date of the determination of his incompetency, or is the beginning date of his entitlement limited to the date claim for same is first made in his behalf. For example, if a veteran is first declared incompetent by the Veterans Administration or upon other acceptable evidence in 1937 and claim for the exemption is not made by him or in his behalf until 1952, would he be entitled to the exemption from 1937 and refund of ad valorem taxes paid from 1937 to 1952 to the extent of the exemptions?"

I am of the opinion that an incompetent veteran is entitled to his ad valorem tax exemption from the date that claim is made by him or on his behalf, and not before. This exemption, covering the property of incompetent veterans, is found in Title 51, Section 2, Code of Alabama 1940, as last amended by Act No. 953, General and Local Acts 1951, page 1626, which contains the general exemptions of persons and property from ad valorem taxation, and like all other exemption statutes should be construed strictly against the one claiming it. **Brown v. Protective Life Ins. Co.**, 188 Ala. 166, 66 So. 47. An exemption from taxation is wholly a matter of legislative grace, and is not a matter of right, nor is it to be presumed or extended by implication. The one claiming such an exemption bears the burden of providing he is entitled to it. **Bowman v. State Tax Commission**, 235 Ala. 190, 178 So. 216, and **Republic Oil Refining Co. v. Granger**, 98 F. Supp. 921.

Since the exemption in question has not, to my knowledge, been interpreted judicially, it appears that it might be helpful to look to some of the other exemptions granted from ad valorem taxation.

In the case of the exemption allowed on property belonging to blind persons, Title 51, Section 2 (f), Code of Alabama 1940, as amended, *supra*,

it has been held that a taxpayer who does not assess his property on or before the third Monday in January of the current tax year waives the exemption. Quarterly Report of Attorney General, Vol. 8, page 316.

Also, as to exemption granted to property of insane persons, Section 2 (f), as amended, *supra*, it was held that a claim made in November, 1939, came too late for allowance for 1939 taxes. Quarterly Report of Attorney General, Vol. 17, page 328.

In the case of claims for homestead exemption, this office has ruled several times that one seeking to take advantage of this exemption must claim it on or before the third Monday in January of the current year, or he waives his right to do so. Biennial Report of Attorney General, 1936-1938, page 424, and Quarterly Report of Attorney General, Vol. 10, page 27.

In Vol. 10, page 27, *supra*, this office, after reaching the above conclusion, gave the following explanation:

"The aforementioned conclusion fixes a limitation co-extensive with the time fixed by law for return of property by a taxpayer. Section 41, Revenue Code of Alabama, for 1935. After the third Monday in January of the then current tax year, the right of a taxpayer to return his property for taxes for the current tax year is foreclosed. Section 41, *supra*. Thereafter, the tax assessor is required to return the property for taxes for that year. However, as I have already stated in the opinion to Hon. Madison L. Smith, *supra*, there is no duty on the tax assessor to ferret out homesteads and grant the exemption."

The opinions referred to in the foregoing paragraphs seem to clearly establish the proposition that all exemptions from ad valorem taxation must be applied for before the third Monday in January of the current tax year, and if they are not claimed within that time they are waived. The rules surrounding the levy of ad valorem taxes are of necessity more rigid and inflexible than those of excise and other taxes. This principle is well stated in the case of *City of Walla Walla v. State*, 85 P. 2d 676, as follows:

"The general ad valorem tax upon real property lies at the foundation of the tax structure of the state, and its paramount rank is, in concept, well-nigh traditional. Such tax is imposed directly upon property and exacted from all owners thereof. It is levied annually, at a regular time, and operates uniformly according to fixed general rules. In reliance upon the comparative certainty of its collection, public officials administer the affairs of state. That this tax be promptly and fully collected is of supreme and vital importance to the people of the commonwealth."

In view of this principle, and the above stated proposition, it is my opinion that the refund statute as to ad valorem taxes, (Title 51, Section

328, Code of Alabama 1940), which provides *inter alia* for a refund where such taxes are paid by mistake or error, was not intended to include a claim for refund by one who has not applied for the exemption granted by the Legislature from *ad valorem* taxation, and discovers his oversight after the time for claiming such exemption is past. This appears to be the rule without exception, and regardless of whether the party involved is *sui juris* or not.

In the opinion of this office reported in Vol. 10, page 27, *supra*, it was further held that the rule touching the final date for claiming homestead exemptions in other counties applied also in Jefferson County, where the "unit system" of assessment was then in operation. Subsequent to this opinion the Supreme Court had occasion to consider this question in the light of amendments passed by the 1939 Legislature. In the case of **Jones v. Johnson**, 240 Ala. 357, 199 So. 539, 543, the Court stated:

"We conclude the benefit of this homestead tax exemption statute, under the present state of the law, is lost, unless claimed **each year** by the taxpayer on or before the third Monday in January of the current year. . . .

"Be this as it may, the Legislature of 1939, while reenacting the homestead tax exemption statute without change, did amend the Unit of Assessment Statute applicable in Jefferson County by adding to Section 6 the following: 'Any person entitled to a homestead exemption shall be credited with said exemption upon properly filling out a claim for said exemption upon forms required by the Tax Assessor. It shall be the duty of the Tax Assessor to prepare and have furnished proper forms for the claim of homestead exemptions.' General Acts 1939, p. 830. [See Section 84, Title 51, Code of Alabama 1940.]

"This amendment clearly requiring the taxpayer to file a special instrument claiming his exemption, but making no provision as to time for filing such claim, must be taken as a legislative approval of the administrative rule then operative in that county." (Emphasis added.)

It is clear, then, from the foregoing that, even under the "unit system" then effective in Jefferson County, a taxpayer had to come in each year and claim his homestead exemption.

Title 51, Section 84, Code of Alabama 1940, which prescribes the procedure to be followed in claiming the homestead exemption under the "unit system," was amended in 1947 by Act No. 141, General Acts 1947, page 45, to provide, in pertinent part, as follows:

". . . that any person who makes a valid claim of homestead exemption after October 1, 1947, which claim is properly allowed, shall not be required annually thereafter to repeat such claim so long as such person is entitled to an exemption of such property as a homestead; . . ."

And in 1951, Act No. 344, General and Local Acts 1951, page 632, was passed, providing for the method of assessment in all counties with not over 400,000 persons. Section 3 of said Act provides, in part, as follows:

"The Tax Assessor shall have the right and authority beginning October 1st 1951, and annually thereafter to credit any person entitled to a statutory ad valorem exemption that the Tax Assessor has the authority and right to grant, **and who has heretofore claimed such exemption**, such statutory exemption, without such person claiming same annually. . . ." (Emphasis added.)

The purport of these two changes by the Legislature was obviously to allow the taxpayer to carry over his exemptions from one year to the next, provided he has come in initially and made a proper claim. It did not do away with the necessity of claiming such exemption within the time allowed; it simply made it unnecessary to come in each year to claim it once it had been claimed and allowed.

Thus, it is seen that in the case of exemptions from ad valorem taxes one who had inadvertently, or otherwise, allowed the time for claiming such an exemption to pass, cannot come in later and attempt to have refunded to him the amount of the exemption which he has allowed to lapse.

In regard to your inquiry concerning the time allowable for making application for refunds as to ad valorem taxes, your attention is again invited to Title 51, Section 328, Code of Alabama 1940. Under that section the time for filing such application is expressly limited in all cases and without exception to two years from the date that such taxes were paid.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

December 16, 1954

Hon. P. G. Harden, Superintendent
Autauga County Board of Education
Prattville, Alabama

Officers and Offices—Sheriffs—County Boards of Education.

1. The office of member of the county board of education is an office of profit.

Handwritten notes and signatures on the right margin, including "P. G. Harden" and "Bernard F. Sykes".

2. The office of chief deputy sheriff is an office of profit.
3. No person shall hold two offices of profit at one and the same time in this State.
4. The acceptance of an office of profit by a person already holding another office of profit operates as a vacation of the office first held.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of November 10, 1954, is as follows:

"Please advise us.

"EXPLANATION: We have been informed that Mr. O. C. Burton, member of the Autauga County Board of Education, has been appointed Chief Deputy Sheriff of Autauga County. Mr. Burton's position on the Board of Education was by an appointment by the Board to fill the unexpired term of Mr. H. Owen Murfee, Jr., who resigned. Normally, the Board members are elected by popular vote for a term of six years. Mr. Burton's position as law enforcement officer is also by appointment.

"Is there any conflict under law that would prohibit Mr. Burton from discharging the duties of both offices, and receiving pay from both offices at the same time?

"In his official capacity as Board member and officer of the law, which position would have priority?

"We will appreciate your reply and ruling on the above questions at your earliest convenience or informing us of some ruling in the past that would or would not apply to this situation."

Under Section 280, Constitution of Alabama 1901, no person shall hold two offices of profit at one and the same time in this State, except justices of the peace, constables, notaries public and commissioners of deeds.

Under Title 41, Section 5, Subsection 7, Code of Alabama 1940, no person shall hold two offices of profit at one and the same time in this State, except notaries public.

The office of member of the county board of education is an office of profit in this State. Quarterly Report of Attorney General, Vol. 32, page 58. The office of chief deputy sheriff is also an office of profit in this State. Quarterly Report of Attorney General, Vol. 64, page 58.

Therefore, the holding of both of these offices at one and the same time is prohibited by Section 280, supra, and Section 5, Subsection 7, supra.

It is well settled that the acceptance of an office of profit within the meaning of Section 280, supra, by a person already holding another office within the field of operation of said section, operates as a vacation of the office first held. *State ex rel. Camp v. Herzberg*, 224 Ala. 636, 141 So. 553.

As I understand your request, Mr. Burton was a member of the county board of education at the time he was appointed chief deputy sheriff. Assuming that this is true, his office as a member of the county board of education was vacated by operation of law when he accepted the office of chief deputy sheriff.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

December 20, 1954

Dr. W. J. Terry,
State Superintendent of Education,
Department of Education,
Montgomery 6, Alabama.

Colleges and Universities—Schools—Municipalities—Assessments.

1. Real estate owned by the State Board of Education and devoted to public school use, upon which is located the State Vocational Trade School at Tuscaloosa, Alabama, is not subject to municipal improvement assessments.

2. A municipal improvement assessment against real estate owned by the State Board of Education and devoted to public school use does not constitute a lien on said property.

3. The Director of the State Vocational Trade School at Tuscaloosa, Alabama, with the approval of State educational authorities, may pay municipal improvement assessments against the State Vocational Trade School at Tuscaloosa, Alabama, if the assessments are in proportion to the increased value of the property.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of December 15, 1954, is as follows:

"The Director of the State Vocational Trade School at Tuscaloosa, Alabama, has been notified of an assessment against the property on which the Trade School is located in the amount of \$6,316.00 representing an assessment for the installation of a sanitary sewer.

"The land on which the Trade School is located is State property. I desire your official opinion on the following questions:

"1. Is the real estate owned by the State Board of Education (which is an arm of the State government and exempt from taxation) subject to municipal assessment?

"2. Can the director of the State Vocational Trade School, Tuscaloosa, Alabama, legally pay a municipal assessment against real estate owned by said State Board of Education?

"3. Is a municipal assessment against real estate owned by the State Board of Education a lien thereon?

"Your attention to this matter will be appreciated."

Section 91, Constitution of Alabama 1901, exempts from taxation the property of the State, counties, and municipal corporations. Therefore, there can be no tax on public school property. But this provision does not prohibit a local assessment for public improvements such as pavement, sewerage, etc., when the legislative intent is clear that such school property is to be so taxed. There is a well-defined distinction between general taxation and a local assessment for public improvements such as sewerage.

The general language in a statute giving cities power to levy assessments for street or sewerage improvements is not sufficient to embrace the property of the State or county which is devoted strictly to public purposes. **City of Huntsville v. County of Madison**, 166 Ala. 389, 52 So. 326; **City of Birmingham v. Birmingham Business College**, 256 Ala. 551, 56 So. 2d 111; Quarterly Report of Attorney General, Vol. 65, page 27.

Even where specifically authorized by statute, the authorities are almost uniform in holding that the assessment cannot be enforced by fixing a lien on public property. **City of Huntsville v. County of Madison**, supra; Quarterly Report of Attorney General, Vol. 65, page 33.

There appears to be in Alabama no statute or constitutional provision now in force which would authorize the improvement assessment by the City

of Tuscaloosa against the public school property upon which is located a State Vocational Trade School.

It follows, therefore, that your first and third questions must be answered in the negative.

In Volume 65, page 33, *supra*, the following was said:

"Your second question must be answered in the affirmative. In Quarterly Report of Attorney General, Vol. 54, page 51, it was held that lack of authority in a municipality to levy such special assessment against property owned by the State of Alabama did not, however, preclude the state, if it so desired, from voluntarily contributing to the cost of such public improvements, provided the contribution is based upon the increased value of the property by reason of the special benefits derived from such improvements. See also **Town of Eutaw v. Coleman**, 189 Ala. 164, 66 So. 464. Thus, if it is the will of the Board of Trustees, and the assessment is in proportion to the increased value of the property, the treasurer of said board may legally pay such assessment."

It follows, therefore, that your second question must be answered in the affirmative, provided the payment meets the approval of the State Board of Education and the State Superintendent of Education and the assessments are in proportion to the increased value of the property.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

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